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Contributing Editor:

Justin Michaelson

Quinn Emanuel Urquhart & Sullivan

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Manuel Walser
Daria Tschütscher

Walser Attorneys at Law Ltd.

Efficiency of process

Liechtenstein is a civil law country. Due to its historical proximity to Austria, both Liechtenstein law and the organisation of the courts are strongly influenced by the Austrian model. In the recent past, however, Swiss law has increasingly been used as a basis for the reception of Liechtenstein's own laws. Since neither Austrian nor Swiss law takes into account the special features of Liechtenstein, the country's own provisions are also often created in deviation from the basis of reception. This applies in particular to the area of procedural law.

At the heart of civil procedural law is the Code of Civil Procedure (*Zivilprozessordnung*, "ZPO"), which was comprehensively revised for 2019. The aim of the revision was, in particular, to accelerate and simplify civil proceedings. The reform most notably contained a restriction on the appealability of procedures and procedural decisions of the Princely Court of Justice (*Fürstliches Landgericht*) as well as the appeal decisions of the Princely Appeal Court (*Fürstliches Obergericht*) to the Princely Supreme Court (*Fürstlicher Oberster Gerichtshof*). Changes also affected the area of evidentiary proceedings. For example, witnesses who are located abroad and who are normally to be questioned by way of mutual legal assistance can now also be questioned via videoconference.

Proceedings before the Liechtenstein courts are conducted in the simplest, quickest and most cost-effective manner possible. Shortly after the filing of a lawsuit, the court will convene a first hearing to discuss certain issues concerning jurisdiction, pendency of the dispute, etc. At the same time, there is already the possibility of taking evidence. As a result of this efficient approach, the majority of court cases before the first instance can generally be settled within a period of approximately three to six months.

Integrity of process

A judge is proposed to Parliament for election by the Judicial Selection Board. The Judicial Selection Board is composed of the reigning Prince, one deputy from each party represented in Parliament, the competent member of the Government and a number of other members corresponding to the representatives of Parliament, who are convened by the reigning

Prince. If the recommended candidate is elected by Parliament, he is then appointed judge by the reigning Prince. Due to limited personnel resources, judges are often recruited from Swiss as well as Austrian courts. In order to counteract such staff shortages, attempts are now being made to fill four "candidate judge" positions on a permanent basis.

Civil lawsuits are brought before the Princely Court of Justice. This consists of 17 full-time judges. A single judge decides on civil law matters. This decision can then be appealed to the Princely Appeal Court, consisting of three senates, which in turn are made up of full-time and part-time judges. The decision is made by a three-member senate, at least two of whom must be legally qualified. Under certain circumstances, the Princely Appeal Court's decision can then be appealed to the Princely Supreme Court. This court consists of two senates of five members each, whereby all members are part-time judges and at least three members of the senate must be legally qualified. These decisions can be appealed to the state court (*Staatsgerichtshof*) only to a limited extent on the grounds of violation of fundamental rights or violation of rights guaranteed by the European Convention on Human Rights. The possibility of decisions being made by a total of four instances guarantees the highest degree of legal certainty.

Although the Court Organization Act (*Gerichtsorgansationsgesetz*) provides for the possibility of non-lawyers taking seats in a senate, it does not provide for the possibility of a pure jury court.

The decision of a court is always subject to the conditions of impartiality and independence of the court. The reasons for which a judge may be rejected are found in the Judicial Organization Act. Thus, as in many other jurisdictions, a judge may not hear a case if he has a personal interest in the matter, is related to a party, or even if there is a close friendship or enmity with a party. If there is already an appearance of bias, the judge may not hear the case in question.

Privilege and disclosure

The attorney is obliged to act in accordance with the law and to represent the rights of his party against everyone faithfully and conscientiously. He shall treat the client's statements entrusted to him confidentially. If he passes on this information to third parties, it can have consequences, such as the loss of the lawyer's licence, but also criminal consequences. Article 15 of the Law on the Legal Profession (*Rechtsanwaltsgesetz*, "RAG") states that the attorney shall be obliged to maintain confidentiality with regard to the matters entrusted to him and the facts that have otherwise become known to him in his professional capacity, the secrecy of which is in the interest of his party. He shall have the right to such confidentiality in judicial and other administrative proceedings in accordance with the provisions of the procedural law. With regard to confidentiality, the lawyer has the right to refuse to testify in accordance with § 321 ZPO. This is also the case in criminal proceedings according to § 108 Criminal Procedure Code (*Strafprozessordnung*). However, the client can release him from the obligation of confidentiality. Article 17 RAG states that the lawyer shall be obliged to refuse representation or even to grant advice if he has represented the other party in the same or in a related matter. Likewise, he may not serve or advise both parties in the same case. This could constitute a conflict of interest and should therefore be avoided. In addition, if the lawyer is acting as a mediator, he is not allowed to provide unilateral advice or representation of one of the parties in this or a related matter against other parties who participated in the mediation.

The lawyer is also obliged to hand over to the party, upon request, the original documents and files belonging to him upon termination of the representation, as well as to keep the files open for a period of 10 years.

Evidence

Liechtenstein civil procedure is structured as an adversarial process with pronounced inquisitorial elements. In the trial, it is the task of the parties to prove their allegations, because the party who derives rights from the existence of an alleged or disputed fact or puts it forward as a defence against the opponent's allegation must also prove it. However, facts that can be presumed to be known to the court, facts that are not disputed by the opposing party, and facts whose existence is presumed by law, do not require proof. However, it always remains the task of the court to determine the truth. Documents, questioning of witnesses and the party, opinions of experts, and a local inspection may be offered as evidence. The ZPO stipulates that evidence relevant to the court must be taken at the hearing before the court. Witnesses must therefore testify orally before the court. Depositions, written statements, and affidavits are not admissible. However, in certain cases, a witness may testify before a deputised judge by videoconference or, in urgent cases, prior to the hearing. Witnesses have a right to refuse to testify with respect to certain persons or facts. For example, a person called as a witness may refuse to testify to questions the answering of which would expose the witness, his spouse or close relatives to criminal prosecution or if it would violate a state-recognised duty of confidentiality (e.g. attorney-client, fiduciary, bank secrecy, etc.).

The judge has the task of conducting the hearing and is therefore entitled to hear the parties and witnesses before the party representatives. Subsequently, the parties may ask questions to the witnesses. However, this is not cross-examination as known to other jurisdictions, since the process of fact-finding is led by the judge. For these reasons, leading questions and any other endeavour to influence witnesses are also prohibited. Inappropriate and misleading questions are therefore rejected by the judge.

With respect to the documents used as evidence in the trial, in contrast to other jurisdictions, there is no mandatory pre-trial disclosure of the same in Liechtenstein law. However, it is possible to obtain an order during the trial compelling the other party to disclose certain documents. Such an order is limited to cases where the document is in the possession of a party who has previously relied on it in the proceedings or where the party burdened with evidence is entitled by law to inspect the document. In addition, an order for disclosure is admissible if the document was prepared for the benefit of the requesting party or if the requested document serves as evidence of the legal relationship between the parties or the circumstances underlying such legal relationship. If the party refuses to disclose the documents despite being ordered to do so, this can only be taken into account accordingly by the court within the framework of the free evaluation of evidence. Liechtenstein law does not provide for any further "punishment". There are also no further means of enforcement to disclose the documents to the other party. Such a refusal leads to the fact that possibly important facts cannot be proven.

In addition to disclosure by the other party, an application may also be made to the court to order a third party to hand over a particular document if the third party is legally obliged to hand it over under the provisions of civil law or if the content of the document is of mutual benefit to the parties (e.g. a joint contract). In contrast to the order addressed to a party to the proceedings, the order addressed to the third party is enforceable. If the third party

claims not to be in possession of the deed, the requesting party may also file an action for surrender of the deed (*Editionsklage*).

The task of the judge is to ascertain the truth. If, in the judge's opinion, the evidence offered by the parties is insufficient for this purpose, he is free to take further evidence independently. When passing judgment, however, he is bound by the requests made by the parties and cannot award the parties more than they have requested.

Costs

The costs incurred by proceedings must primarily be borne by the parties themselves. The fees incurred for bringing a civil action are regulated by the Court Fees Act (*Gerichtsgebührengesetz*). In contrast, the attorney's fee may be freely set within the limits of the Lawyers' Fees Act, with the complexity of the case, the degree of liability associated with the case and the nature of the services, in particular, determining the amount of the fee. If it is not possible for a party to bear these costs without putting their "daily needs" in danger, the party may file an application for the granting of legal aid.

Once the proceedings have been concluded, the successful party may claim reimbursement from the unsuccessful party for the legal costs it has incurred, with settlement taking place in accordance with the prescribed statutory rates. If the unsuccessful party does not pay within the time limit set by the court, the decision on costs shall become enforceable. It should always be noted that the winning party is not reimbursed for all the costs incurred by it in the legal dispute, but the attorney's fee to be reimbursed by the losing party is charged according to a statutory rate. However, this rate is often lower than the actual time spent by the lawyer, which is billed to the client. If, on the other hand, the party is only successful with 50% of the claim, the costs shall be deemed to have been paid and each party shall bear the costs it has incurred itself.

If the defendant is sued by a person not domiciled in Liechtenstein, security for the costs of the proceedings in the amount of the estimated court and attorneys' fees may be required due to the risk of non-enforceability of the costs decision in the case of foreign domicile, if the plaintiff does not own real property or other assets in Liechtenstein.

Litigation funding

The court costs incurred by the court proceedings are, in principle, to be borne by the parties themselves. However, if a person is unable to pay these costs without putting their "daily needs" in danger, he may receive state assistance. This legal aid is available to both natural and legal persons. In practice, the granting of legal aid is handled much more strictly in the case of legal entities than in the case of natural persons. However, it is only granted if the application does not appear to be obviously wilful or hopeless. If the party's assets or income improve significantly, he must inform the court immediately by submitting a declaration of assets. The legal aid merely relieves the person from having to pay his own costs. If he is unsuccessful in the proceedings and also has to bear the costs of the other party, this is not covered by the legal aid.

Liechtenstein law does not provide statutory rules governing third-party funding. Therefore, there are no restrictions as to arrangements between funders and litigants. There is no obligation to disclose funding arrangements either. However, if lawyers act as third-party funders, the general professional restrictions apply, since contingency and conditional fee arrangements (*quota litis*), which give part of the proceeds to the lawyer, are prohibited between lawyers and their clients.

Class actions

In contrast to other legal systems, Liechtenstein procedural law does not provide for class actions, since the plaintiff must be fully entitled to assert the respective right, otherwise the action will be dismissed for lack of active legitimacy. Only in certain exceptional cases, for example, if the claim has been assigned or the subject matter of the dispute has been sold to a third party, is it possible to assume the right of a third party.

Interim relief

In Liechtenstein, interim relief is regulated in the Liechtenstein Enforcement Act (*Exekutionsordnung*, "EO"). For the court to grant interim relief, it needs an application. This application can be filed either together with the statement of claim or beforehand, or during the course of the proceedings.

The purpose of the interim relief is to secure the rights of the creditor for future execution proceedings. The aim is to protect the creditor's current position so that the debtor's behaviour on the one hand and possible adverse circumstances on the other hand do not frustrate or hinder the creditor's satisfaction when he has the enforceable title. To achieve its goal, the interim relief must be issued and enforced quickly, which is why the material claim and the threat to enforcement must be certified. The existence of the claim is therefore only to be examined as a preliminary question in the discovery proceedings. If the preliminary injunction is finally issued by order, it has a double function. On the one hand it is an execution title, and on the other hand it is an execution permit.

The EO provides for two types of interim remedies:

- the security of monetary claims (*Sicherungsbot*); and
- the security of non-monetary claims, a so-called "official order" (*Amtsbefehl*).

Furthermore, there is special interim relief, which clarifies the securing of other legal spheres and is standardised in Article 276, para. 1 (b) EO. The aim here is to prevent imminent violence and to avert imminent irreparable damage, i.e. to comprehensively secure a contentious legal sphere.

The security of monetary claims

The prerequisite for issuing interim relief to secure a monetary claim is certification from the endangered party of a concrete subjective endangerment of the collection of the monetary claim that, without the interim relief, the opponent of the endangered party may thwart or hinder the collection of such claim. Alternatively, it must certify a claim of the endangered party and the concrete objective danger that the judgment would have to be enforced abroad and that no assets suitable for satisfaction would be available in Liechtenstein.

In the end, only the monetary claim that is the subject of the current or future process is to be secured. In the absence of a certificate, the application for remission must be rejected. Even if the certificate is sufficient, the court may, depending on the circumstances, make the authorisation conditional on the provision of a security.

In order to secure the monetary claims, the court may order the following means of security listed in Article 275, para. 1 EO:

- the seizure, custody and administration of movable assets of the opponent of the endangered party, including the legal deposit of money;
- a judicial prohibition on the sale or pledging of movable assets of the opponent of the endangered party;

- a judicial prohibition directed towards third parties; or
- a judicial prohibition on transferring or mortgaging immovable property.

In addition, in order to secure other claims or rights, other means such as establishing the right of retention or ordering the debtor to refrain from any action adversely affecting the claim are available.

Official order

The interim relief to secure other individual claims is directed to claims that are not directed to payment for other performance, acquiescence or omission. The endangered party must assert and certify the claim and its endangerment. The risk is merely a concrete objective risk that does not depend on the behaviour of the debtor. Accordingly, it must be aware that without the interim relief, the legal pursuit or realisation of the claim would be thwarted or made considerably more difficult. The objective threat is satisfied by the need to enforce the judgment abroad.

The security means for the securing of individual claims are listed in Article 277, para. 1 EO:

- the judicial deposit of the movable property in the custody of the opponent of the endangered party or the order of safekeeping by an authorised depository or specially appointed custodian;
- the administration of the movable or immovable property or rights;
- the authorisation of the endangered party to retain the opponent's property in his custody until the final decision on this claim;
- the commandment addressed to the opponent of the endangered party to carry out individual actions that appear necessary to preserve the object of the claim or to maintain its present condition;
- the prohibition of individual detrimental acts or changes to the objects of the claim directed at the opponent of the party at risk;
- the judicial ban on the sale, encumbrance or pledging of real estate or book-entry rakes;
- the judicial prohibition of third parties, if the opponent of the endangered party has to make a claim to a third person for performance or surrender; and
- personnel arrest according to Article 281 EO only applies if no other interim relief is sufficient to achieve the intended security purpose and if not, only the endangerment and the claim are certified. Furthermore, it only applies if the opponent of the endangered party is a fugitive or suspected of fleeing and if, at the same time, the concern is justified that the execution would be thwarted by the flight of the opponent of the endangered party.

Interim injunctions are generally issued and enforced at the expense of the applicant, irrespective of any claim to which the applicant may be entitled at the end of the ordinary proceedings. Exceptions exist and the costs are imposed on the defendant if he has unsuccessfully applied for the restriction or cancellation of the temporary injunction. The defendant shall then bear the costs incurred for the unsuccessful restriction or revocation.

Enforcement of judgments/awards

The enforcement of civil law judgments is determined by national law, namely by the EO. According to the EO, execution acts may take place on the basis of foreign acts and deeds only if this is provided for in state treaties or if the reciprocity is guaranteed by state

treaties or by government declarations of reciprocity. Liechtenstein has been a member of the European Economic Area ("EEA") since 1995 and is also a signatory to the following international and multilateral agreements:

- the Hague Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations, 15 April 1958;
- the European Convention Concerning the Recognition and Enforcement of Decisions relating to Custody Rights for Children, 20 May 1980;
- the European Convention on Information on Foreign Law, 7 June 1968;
- the Additional Protocol to the European Convention on Information on Foreign Law, 15 March 1978;
- the European Convention on the Calculation of Time Limits, 16 May 1972;
- the Convention of the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), 10 June 1958; and
- the Hague Convention on the Law Applicable to Trusts and on their Recognition, 1 July 1985.

However, Liechtenstein has not yet acceded to the Brussels Convention on Jurisdiction and Enforcement or the Lugano Convention. In addition, bilateral state treaties assuring mutual recognition exist only with Austria and Switzerland. The agreements do not cover every single civil law matter, and expressly exclude the enforcement of interim injunctions, decisions issued in insolvency proceedings, etc. Since such bilateral treaties exist only with Austria and Switzerland, this consequently means that foreign judgments are, in principle, not recognised or enforced.

Ultimately, foreign judgments are recognised as public documents and therefore facilitate the collection of claims. If an official document is available, it can be used to request the initiation of legal proceedings. Within the framework of this procedure (*Rechtsöffnungsverfahren*), the court discusses in summary proceedings whether or not the creditor has a claim against the debtor on the basis of the documents. If the court decides in the affirmative, the debtor has 14 days to file a so-called "action for annulment" (*Aberkennungsklage*) with the court. It is then clarified in an ordinary trial whether or not the creditor's claim against the debtor is justified.

In contrast, Liechtenstein has acceded to the New York Convention. Therefore, awards rendered by an arbitral tribunal in Liechtenstein can be enforced in all contracting states and therefore almost worldwide, and all arbitral awards issued in a contracting state are in turn recognised and enforced in Liechtenstein.

Cross-border litigation

Liechtenstein is a signatory to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters. Therefore, Liechtenstein assists in the service of judicial documents, as well as in obtaining evidence, etc.

In contrast, the Liechtenstein courts have jurisdiction to hear all those cases in which an (inter)national jurisdiction standard declares them to have jurisdiction or the parties declare the courts in Liechtenstein to have jurisdiction on the basis of a valid agreement on the place of jurisdiction. According to the domestic jurisdiction rules, however, the courts in Liechtenstein always have jurisdiction if the defendant has his domicile or registered office in Liechtenstein.

International arbitration

The arbitration procedure in Liechtenstein was reformed in 2010. As in the rest of the ZPO, the provisions are very much based on the Austrian model, which regulation largely follows the UNCITRAL Model Law on International Commercial Arbitration 1985. Liechtenstein arbitration law therefore largely corresponds to international standards. The international scope of application of arbitral tribunals in Liechtenstein is given (with a few exceptions) if the seat of arbitration is in Liechtenstein. It should be emphasised that, unlike in the Austrian model, the arbitration of disputes arising from the association relationship by institutions is not excluded from the scope of application of arbitration law. Furthermore, the Liechtenstein Chamber of Commerce and Industry released the Liechtenstein Rules of Arbitration in 2012. Parties can agree that an arbitral tribunal has jurisdiction under these rules.

Any pecuniary claim that is subject to a court decision is arbitrable. Only certain business-related disputes, family law matters and disputes arising from apprenticeship contracts cannot be the subject of an arbitration agreement. Arbitration agreements must be in writing and may be concluded in a jointly signed document, a standard clause in a contract or through correspondence exchanged between the parties.

The parties are largely free to determine the number and selection of arbitrators. In practice, these are mostly lawyers and attorneys at law. However, active judges during their employment cannot be appointed as arbitrators in Liechtenstein. The prerequisite for the election of an arbitrator is always his impartiality and independence. To act as an arbitrator, it is required to disclose several personal matters such as financial or other business interests in the subject matter of the dispute, or personal or business relationships with one of the parties. If a proposed arbitrator does not meet these requirements, the arbitrator may be rejected. The ground for challenging state judges in Liechtenstein courts may serve as a guideline for this. The parties may provide for stricter or additional requirements as to neutrality or specific qualifications. If an arbitrator is to be challenged, the party challenging him must do so in writing within four weeks. The arbitral tribunal shall then decide on the challenge. Due to the high risk of an incorrect decision, the rejecting party can request a review by the state court within four weeks. According to § 608 ZPO, a substitute arbitrator must be appointed if an arbitrator resigns or is successfully challenged. If the parties have not reached an agreement on the appointment of the arbitral tribunal, nor do they agree on it within a reasonable period of time, the appointment can be made by the ordinary court upon application. The state court also assists the parties in the appointment of a substitute arbitrator, if necessary. In addition, the state court provides assistance in the enforcement of interim measures.

Furthermore, the parties are basically free to conduct the arbitration proceedings according to their own ideas and without interference from the state court. It is also open to a party, after the arbitration proceedings have been settled, to sue in the state courts for annulment of the arbitral award. However, this is only possible if:

- a valid arbitration agreement does not exist, or if the arbitral tribunal has denied jurisdiction but a valid arbitration agreement does exist, or if a party was incapable of entering into a valid arbitration agreement under the law governing him personally;
- a party was not duly notified of the appointment of an arbitrator or of the arbitration proceedings, or for some other reason was unable to assert its means of attack or defence;

- the award concerns a dispute to which the arbitration agreement does not apply, or it contains decisions that exceed the limits of the arbitration agreement or the parties' request for relief; if the defect concerns only a separable part of the award, that part shall be set aside;
- the constitution or composition of the arbitral tribunal is inconsistent with any provision of this section or with any permissible agreement of the parties;
- the arbitral proceedings have been conducted in a manner contrary to fundamental values of the Liechtenstein legal system (*ordre public*);
- the conditions exist under which, according to § 498, para. 1, Ziff. 1 to 5 ZPO, a court judgment may be challenged by means of an action for revision;
- the subject matter of the dispute is not arbitrable under domestic law; or
- the arbitral award is contrary to fundamental values of the Liechtenstein legal system (*ordre public*).

Mediation and ADR

The most central extrajudicial means of resolving disputes are arbitration and mediation, with arbitration being considered the most important form of alternative dispute resolution.

In addition to these methods, there are other extrajudicial means of dispute resolution in Liechtenstein. This is particularly the case in the form of conciliation bodies and professional associations. For example, the Conciliation Board (*Schlichtungsstelle*) is a mediation body for conflicts between clients and a bank or an asset management company as well as payment service providers.

Regulatory investigations

Due to the accession of Liechtenstein to the EEA in 1995, Liechtenstein implements much of the legislation of the European Union in the form of directives and regulations. This influence consequently has a major impact on regulatory investigations. An important regulation to name is the General Data Protection Regulation of the European Parliament and of the Council, which was adopted into the EEA body of law in July 2018. In light of the evolution and increasing complexity of legislation, it is likely that lawyers will also be increasingly involved in administrative, compliance and regulatory matters.

Manuel Walser

Tel: +423 265 80 80 / Email: manuel.walser@walser-law.li

Dr. iur. Manuel Walser, LL.M. is an attorney and member of the Board of Directors of Walser Attorneys at Law Ltd. Since 2014, he has been a member of the Board of Directors of the Liechtenstein Bar Association as well as the Liechtenstein Arbitration Association. His practice focuses on representing private and institutional clients in civil and commercial disputes before the state courts, in particular in international corporate, foundation and trust matters. He also regularly acts as counsel and arbitrator in international and national arbitration proceedings. Since 2017, he has been an official arbitrator for the Principality of Liechtenstein at the OSCE Court of Conciliation and Arbitration.

Daria Tschütscher

Tel: +423 265 80 80 / Email: daria.tschuetscher@walser-law.li

MLaw Daria Tschütscher is a legal associate at Walser Attorneys at Law Ltd. Previously, she studied law at the University of Bern and graduated in summer 2020. During her studies, she gained practical experience in the legal department of the Office for Migration of the Principality of Liechtenstein, the European Institute of the University of Liechtenstein and two renowned Liechtenstein law firms. After graduation, she completed her judicial internship at the Princely Court of Justice before joining Walser Attorneys at Law Ltd. as a legal associate. Her practice focuses on civil law, criminal law and litigation.

Walser Attorneys at Law Ltd.

Lettstrasse 37, 9490 Vaduz, Liechtenstein
Tel: +423 265 80 80 / URL: www.walser-law.li

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